

June 6, 2011

VIA EMAIL awlaputz@waterboards.ca.gov AND FIRST CLASS U.S. MAIL

Ms. Pamela Creedon
Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Re: Comments on Short-Term Renewal of the Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands

Dear Ms. Creedon:

The agricultural organizations and coalitions (agricultural entities) identified below appreciate the opportunity to review and comment on the proposed resolution for the Short-Term Renewal of the Coalition Group Conditional Waiver of Waste Discharge Requirements for Discharges From Irrigated Lands (Short-Term Renewal). Accordingly, we submit the following comments.

I. Extension of the Waiver For 24 Months

We support the Short-Term Renewal for 24 months. The originally proposed 12-month period is too short for such an extensive and labor-intensive undertaking. The two-year extension is necessary to allow the Central Valley Regional Water Quality Control Board (Regional Board) sufficient time to work with the various agricultural entities in preparing multiple waste discharge requirements (WDRs) and/or conditional waivers.

II. Mitigation Measures

As we expressed in our September 27, 2010, Comments on the Draft Program Environmental Impact Report for the Central Valley Long-Term Irrigated Lands Regulatory Program (LTILRP), we are concerned with some of the mitigation measures that are now being incorporated into the Short-Term Renewal. In the first place, in most cases the mitigation requirements are imposed based upon very broadly assumed potential effects, without any analysis of the actual likely effects of a short-term program or of the high variability in what actions will be implemented in discrete geographic areas. Further, the mitigation measures cannot be legally imposed in all cases, and therefore should not have been included in the Final EIR, or here.

Specifically, the Mitigation Measures for cultural resources, vegetation and wildlife resources, and fisheries identified in Attachment B, sections 1, 2, and 3, propose mitigation

measures that would require additional CEQA review if such resources cannot be avoided. We question the requirement to undertake additional CEQA review when an adverse effect on a cultural resource, sensitive biological resource, or fisheries cannot be avoided. While we agree that impacts to such areas should be avoided, we are concerned that, as proposed, the mitigation measures impose a new CEQA requirement on agricultural landowners and operators when no discretionary project may actually be triggered by the action and instead the actions are within the parameters of ordinary ongoing farming operations. For example, in some jurisdictions, and depending on the construction activity, grading permits may be required for installation of certain management practices (e.g., detention basins). However, in many jurisdictions, the act of constructing a management practice may not rise to the level of activity subject to a grading permit.

Further, the implementation of management practices at the farm level, which would be encouraged in area-wide waste discharge requirements (WDRs), is not subject to a discretionary approval by the Central Valley Water Board. Thus, there is no universal trigger for additional CEQA review. At most, such review may be necessary if the construction activity constitutes a discretionary project under a local jurisdiction's authority or triggers the need for a California Fish and Game streambed alteration permit. To avoid confusion, these mitigation measures need to be revised to clarify that additional CEQA review is only necessary if a discretionary project for approval has been triggered by the activity in question.

Additionally, we are concerned that the vegetation and wildlife mitigation measure for wetland loss is too broad and fails to recognize that implementation of management practices is most likely to occur on irrigated agricultural land currently in production. The Central Valley Water Board does not have the authority to order the delineation of affected wetland areas identified as converted croplands because such agricultural areas do not fall within the jurisdiction of the Corps of Engineers (Corps). The Clean Water Act (CWA) and the authority of the Corps to perform operations under the CWA apply only to "waters of the United States." The regulatory definition of waters of the United States specifically states that, "Waters of the United States do not include prior converted cropland . . ." (33 C.F.R. § 328.3(a)(8).) Furthermore, guidance issued by the U.S. EPA in 2008 clarifying CWA jurisdiction following the Supreme Court case of *Rapanos v. United States* (2006) 547 U.S. 715, made no mention of and had no effect on this exemption for ongoing agricultural operations. As such, cropland continues to be exempt from the Corps' CWA jurisdiction. If it is not within the authority of the Corps to conduct a delineation because the area to be examined is not a water of the United States as defined by federal law or regulation, then it follows that it is not within the authority of the Central Valley Water Board to order individual agricultural operations to undertake such an action as a mitigation measure.

Thus, we recommend that the mitigation measures as expressed in Attachment B be revised accordingly.

III. Technical Reports

As proposed, the Technical Report requirement is confusing because it establishes a deadline for such reports that is the same for dischargers as well as a Coalition group. Also, as a practical matter, a Coalition group may not know if a discharger has already sent a Technical Report to the Regional Board. To avoid confusion and duplication of effort, we recommend that the Technical Report requirement be amended as follows:

8. Dischargers shall submit a Mitigation Monitoring Report by 1 April 2013 to the Regional Water Board. ~~A Coalition group representing the Discharger should submit a Mitigation Monitoring Report in lieu of the Discharger.~~ The Mitigation Monitoring Report shall include information on the implementation of CEQA Mitigation Measures described in section F below. ~~Any individual irrigated agricultural operator required to mitigate a potential adverse environmental impact, as described in Section F, shall submit the following information to the Coalition in timely fashion to allow the Coalition to report to the Central Valley Water Board by 1 April 2013, including the mitigation measure implemented, identified potential impact the mitigation measure addressed, location of the mitigation measure [parcel number, county], and any steps taken to monitor the ongoing success of the measure. In lieu of submitting a Mitigation and Monitoring Report to the Regional Water Board by 1 April 2013, the discharger may submit the information to the discharger's applicable coalition group, if any, by 1 February 2013, and the Coalition group shall then report the information to the Regional Water Board by 1 April 2013. A coalition group is not responsible for submitting information that is not sent to them directly by the 1 February 2013 deadline.~~

If you have any specific questions with respect to these comments, please contact Theresa "Tess" A. Dunham at (916) 446-7979. Thank you.

Sincerely,

California Cotton Ginners and Growers Association
California Farm Bureau Federation
California Rice Commission
East San Joaquin Water Quality Coalition
Sacramento Valley Water Quality Coalition
San Joaquin County-Delta Water Quality Coalition
Turlock Irrigation District
Western Growers Association
Western Plant Health Association
Westside San Joaquin River Watershed Coalition

cc: Adam Laputz
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